100-572 NOT FILMED

LEAD CONTAMINATION CONTROL ACT OF 1988

NEWARK PUBLIC LIBRARY
FEB 23 1989
U.S. GOVT. PUBS
DEPOSITORY 376

READEX MICRO best copy available

29-139 O - 88 (572)

AE 2.110:

Public Law 100-572
100th Congress

An Act

Oct. 31, 1988
[H.R. 4939]

To amend the Safe Drinking Water Act to control lead in drinking water.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Lead Contamination Control Act of 1988.
Consumer protection.
42 USC 201 note.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Lead Contamination Control Act of 1988".

SEC. 2. LEAD IN DRINKING WATER COOLERS AND IN SCHOOL DRINKING WATER.

(a) ADDITIONAL REQUIREMENTS TO REGULATE THE SAFETY OF DRINKING WATER.—The Safe Drinking Water Act (title XIV of the Public Health Service Act; 42 U.S.C. 300f and following) is amended by adding the following new part at the end thereof:

"PART F—ADDITIONAL REQUIREMENTS TO REGULATE THE SAFETY OF DRINKING WATER

42 USC 300j-21.

"SEC. 1461. DEFINITIONS.

"As used in this part—

"(1) DRINKING WATER COOLER.—The term 'drinking water cooler' means any mechanical device affixed to drinking water supply plumbing which actively cools water for human consumption.

"(2) LEAD FREE.—The term 'lead free' means, with respect to a drinking water cooler, that each part or component of the cooler which may come in contact with drinking water contains not more than 8 percent lead, except that no drinking water cooler which contains any solder, flux, or storage tank interior surface which may come in contact with drinking water shall be considered lead free if the solder, flux, or storage tank interior surface contains more than 0.2 percent lead. The Administrator may establish more stringent requirements for treating any part or component of a drinking water cooler as lead free for purposes of this part whenever he determines that any such part may constitute an important source of lead in drinking water.

"(3) LOCAL EDUCATIONAL AGENCY.—The term 'local educational agency' means—

"(A) any local educational agency as defined in section 198 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 3381),

"(B) the owner of any private, nonprofit elementary or secondary school building, and

"(C) the governing authority of any school operating under the defense dependent's education system provided for under the Defense Dependent's Education Act of 1978 (20 U.S.C. 921 and following).

"(4) REPAIR.—The term 'repair' means, with respect to a drinking water cooler, to take such corrective action as is necessary to ensure that water cooler is lead free.

"(5) REPLACEMENT.—The term 'replacement', when used with respect to a drinking water cooler, means the permanent removal of the water cooler and the installation of a lead free water cooler.

"(6) SCHOOL.—The term 'school' means any elementary school or secondary school as defined in section 198 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2854) and any kindergarten or day care facility.

"(7) LEAD-LINED TANK.—The term 'lead-lined tank' means a water reservoir container in a drinking water cooler which container is constructed of lead or which has an interior surface which is not lead free.

"SEC. 1462. RECALL OF DRINKING WATER COOLERS WITH LEAD-LINED TANKS. 42 USC 300j-22.

"For purposes of the Consumer Product Safety Act, all drinking water coolers identified by the Administrator on the list under section 1463 as having a lead-lined tank shall be considered to be imminently hazardous consumer products within the meaning of section 12 of such Act (15 U.S.C. 2061). After notice and opportunity for comment, including a public hearing, the Consumer Product Safety Commission shall issue an order requiring the manufacturers and importers of such coolers to repair, replace, or recall and provide a refund for such coolers within 1 year after the enactment of the Lead Contamination Control Act of 1988. For purposes of enforcement, such order shall be treated as an order under section 15(d) of that Act (15 U.S.C. 2064(d)). Business and industry.

"SEC. 1463. DRINKING WATER COOLERS CONTAINING LEAD. 42 USC 300j-23.

"(a) PUBLICATION OF LISTS.—The Administrator shall, after notice and opportunity for public comment, identify each brand and model of drinking water cooler which is not lead free, including each brand and model of drinking water cooler which has a lead-lined tank. For purposes of identifying the brand and model of drinking water coolers under this subsection, the Administrator shall use the best information available to the Environmental Protection Agency. Within 100 days after the enactment of this section, the Administrator shall publish a list of each brand and model of drinking water cooler identified under this subsection. Such list shall separately identify each brand and model of cooler which has a lead-lined tank. The Administrator shall continue to gather information regarding lead in drinking water coolers and shall revise and republish the list from time to time as may be appropriate as new information or analysis becomes available regarding lead contamination in drinking water coolers. Public information.

"(b) PROHIBITION.—No person may sell in interstate commerce, or manufacture for sale in interstate commerce, any drinking water cooler listed under subsection (a) or any other drinking water cooler which is not lead free, including a lead-lined drinking water cooler.

"(c) CRIMINAL PENALTY.—Any person who knowingly violates the prohibition contained in subsection (b) shall be imprisoned for not more than 5 years, or fined in accordance with title 18 of the United States Code, or both.

"(d) CIVIL PENALTY.—The Administrator may bring a civil action in the appropriate United States District Court (as determined under the provisions of title 28 of the United States Code) to impose a civil penalty on any person who violates subsection (b). In any such action the court may impose on such person a civil penalty of not more than $5,000 ($50,000 in the case of a second or subsequent violation).

42 USC 300j-24.

"SEC. 1464. LEAD CONTAMINATION IN SCHOOL DRINKING WATER.

"(a) DISTRIBUTION OF DRINKING WATER COOLER LIST.—Within 100 days after the enactment of this section, the Administrator shall distribute to the States a list of each brand and model of drinking water cooler identified and listed by the Administrator under section 1463(a).

Public information.

"(b) GUIDANCE DOCUMENT AND TESTING PROTOCOL.—The Administrator shall publish a guidance document and a testing protocol to assist schools in determining the source and degree of lead contamination in school drinking water supplies and in remedying such contamination. The guidance document shall include guidelines for sample preservation. The guidance document shall also include guidance to assist States, schools, and the general public in ascertaining the levels of lead contamination in drinking water coolers and in taking appropriate action to reduce or eliminate such contamination. The guidance document shall contain a testing protocol for the identification of drinking water coolers which contribute to lead contamination in drinking water. Such document and protocol may be revised, republished and redistributed as the Administrator deems necessary. The Administrator shall distribute the guidance document and testing protocol to the States within 100 days after the enactment of this section.

State and local governments.

"(c) DISSEMINATION TO SCHOOLS, ETC.—Each State shall provide for the dissemination to local educational agencies, private nonprofit elementary or secondary schools and to day care centers of the guidance document and testing protocol published under subsection (b), together with the list of drinking water coolers published under section 1463(a).

"(d) REMEDIAL ACTION PROGRAM.—

State and local governments.

"(1) TESTING AND REMEDYING LEAD CONTAMINATION.—Within 9 months after the enactment of this section, each State shall establish a program, consistent with this section, to assist local educational agencies in testing for, and remedying, lead contamination in drinking water from coolers and from other sources of lead contamination at schools under the jurisdiction of such agencies.

"(2) PUBLIC AVAILABILITY.—A copy of the results of any testing under paragraph (1) shall be available in the administrative offices of the local educational agency for inspection by the public, including teachers, other school personnel, and parents. The local educational agency shall notify parent, teacher, and employee organizations of the availability of such testing results.

"(3) COOLERS.—In the case of drinking water coolers, such program shall include measures for the reduction or elimination of lead contamination from those water coolers which are not lead free and which are located in schools. Such measures shall be adequate to ensure that within 15 months after the enactment of this subsection all such water coolers in

schools under the jurisdiction of such agencies are repaired, replaced, permanently removed, or rendered inoperable unless the cooler is tested and found (within the limits of testing accuracy) not to contribute lead to drinking water.

"SEC. 1465. FEDERAL ASSISTANCE FOR STATE PROGRAMS REGARDING LEAD CONTAMINATION IN SCHOOL DRINKING WATER.

42 USC 300j-25.

"(a) SCHOOL DRINKING WATER PROGRAMS.—The Administrator shall make grants to States to establish and carry out State programs under section 1464 to assist local educational agencies in testing for, and remedying, lead contamination in drinking water from drinking water coolers and from other sources of lead contamination at schools under the jurisdiction of such agencies. Such grants may be used by States to reimburse local educational agencies for expenses incurred after the enactment of this section for such testing and remedial action.

"(b) LIMITS.—Each grant under this section shall be used as by the State for testing water coolers in accordance with section 1464, for testing for lead contamination in other drinking water supplies under section 1464, or for remedial action under State programs under section 1464. Not more than 5 percent of the grant may be used for program administration.

"(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section not more than $30,000,000 for fiscal year 1989, $30,000,000 for fiscal year 1990, and $30,000,000 for fiscal year 1991.".

SEC. 3. LEAD POISONING PREVENTION PROGRAMS.

The Public Health Service Act is amended by adding the following new section after section 317:

"SEC. 317A. LEAD POISONING PREVENTION.

42 USC 247b-1.

"(a) GRANTS TO STATES.—The Secretary, acting through the Director of the Centers for Disease Control, may make grants to States and agencies of units of local governments for the initiation and expansion of community programs designed to (1) screen infants and children for elevated blood lead levels, (2) assure referral for treatment of, and environmental intervention for, infants and children with such blood lead levels, and (3) provide education about childhood lead poisoning. In making grants under this paragraph, the Secretary shall give priority to applications for programs which will serve areas with a high incidence of elevated blood lead levels in infants and children.

Children and youth.

"(b) GRANT APPLICATIONS.—(1) No grant may be made under subsection (a), unless an application therefor has been submitted to, and approved by, the Secretary. Such an application shall be in such form and shall be submitted in such manner as the Secretary shall prescribe and shall include each of the following:

"(A) A complete description of the program which is to be provided by or through the applicant.

"(B) Assurances satisfactory to the Secretary that the program to be provided under the grant applied for will include educational programs designed to communicate to parents, educators, and local health officials the significance and prevalence of lead poisoning in infants and children which the program is designed to detect and prevent.

Children and youth.

"(C) Assurances satisfactory to the Secretary that the applicant will report on a quarterly basis the number of infants and children screened for elevated blood lead levels, the number of infants and children who were found to have elevated blood lead levels, the number and type of medical referrals made for such infants and children, the outcome of such referrals, and other information to measure program effectiveness as required under paragraph (2).

"(D) Assurances satisfactory to the Secretary that the applicant will make such reports respecting the program involved as the Secretary may require.

"(E) Such other information as the Secretary may prescribe.

Reports.

"(2) The Secretary shall prepare and submit a report to the Committee on Energy and Commerce of the United States House of Representatives and to the Committee on Labor and Human Resources of the United States Senate not later than one year after the enactment of this section, and annually thereafter, on the effectiveness during the period reported on of the programs assisted under grants under subsection (a).

"(c) MAINTENANCE OF EFFORT.—No grant may be made under subsection (a) unless the Secretary determines that there is satisfactory assurance that Federal funds made available under such a grant for any period will be so used as to supplement and, to the extent practical, increase the level of State, local, and other non-Federal funds that would, in the absence of such Federal funds, be made available for the program for which the grant is to be made and will in no event supplant such State, local, and other non-Federal funds.

"(d) COORDINATION.—No grant may be made under subsection (a) unless the Secretary determines that there will be coordination between the recipient of the grant and activities within the State in which the grantee is located under titles V and XIX of the Social Security Act relating to lead poisoning prevention.

"(e) METHOD AND AMOUNT OF PAYMENT.—The Secretary shall determine the amount of a grant made under subsection (a). Payments under such grants may be made in advance on the basis of estimates or by way of reimbursement, with necessary adjustments on account of underpayments or overpayments, and in such installments and on such terms and conditions as the Secretary finds necessary to carry out the purposes of such grants. Not more than 10 percent of any grant may be obligated for administrative costs.

"(f) SUPPLIES, EQUIPMENT, AND EMPLOYEE DETAIL.—The Secretary, at the request of a recipient of a grant under subsection (a), may reduce the amount of such grant by—

"(1) the fair market value of any supplies or equipment furnished the grant recipient, and

"(2) the amount of the pay, allowances, and travel expenses of any officer or employee of the Government when detailed to the grant recipient and the amount of any other costs incurred in connection with the detail of such officer or employee,

when the furnishing of such supplies or equipment or the detail of such an officer or employee is for the convenience of and at the request of such grant recipient and for the purpose of carrying out a program with respect to which the grant under subsection (a) is made. The amount by which any such grant is so reduced shall be available for payment by the Secretary of the costs incurred in furnishing the supplies or equipment, or in detailing the personnel,

on which the reduction of such grant is based, and such amount shall be deemed as part of the grant and shall be deemed to have been paid to the grant recipient.

"(g) RECORDS.—Each recipient of a grant under subsection (a) shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such grant, the total cost of the undertaking in connection with which such grant was made, and the amount of that portion of the cost of the undertaking supplied by other sources, and such other records as will facilitate an effective audit. Public information.

"(h) AUDIT AND EXAMINATION OF RECORDS.—The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient of a grant under subsection (a), that are pertinent to such grant.

"(i) INDIAN TRIBES.—For purposes of this section, the term 'units of local government' includes Indian tribes.

"(j) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section not more than $20,000,000 for fiscal year 1989, $22,000,000 for fiscal year 1990, and $24,000,000 for fiscal year 1991.".

SEC. 4. CERTIFICATION OF TESTING LABORATORIES. 42 USC 300j-26.

The Administrator of the Environmental Protection Agency shall assure that programs for the certification of testing laboratories which test drinking water supplies for lead contamination certify only those laboratories which provide reliable accurate testing. The Administrator (or the State in the case of a State to which certification authority is delegated under this subsection) shall publish and make available to the public upon request the list of laboratories certified under this subsection. Public information.

SEC. 5. CONFORMING AMENDMENT. 42 USC 300j-4.

Section 1445 of the Safe Drinking Water Act (title XIV of the Public Health Service Act) is amended by adding the following new subsection at the end thereof:

"(f) INFORMATION REGARDING DRINKING WATER COOLERS.—The Administrator may utilize the authorities of this section for purposes of part F. Any person who manufactures, imports, sells, or distributes drinking water coolers in interstate commerce shall be treated as a supplier of water for purposes of applying the provisions of this section in the case of persons subject to part F.". Business and industry.

Approved October 31, 1988.

LEGISLATIVE HISTORY—H.R. 4939:

HOUSE REPORTS: No. 100-1041 (Comm. on Energy and Commerce).
CONGRESSIONAL RECORD, Vol. 134 (1988):
Oct. 5, considered and passed House.
Oct. 14, considered and passed Senate.

○